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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 227

ANTONIO CORALLO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 303

JAMES VINCENT KEOGH, PETITIONER

v.

UNITED STATES OF AMERICA

No. 304

ELLIOTT KAHANER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (V. 1-48)[1] is reported at 317 F. 2d 459. Opinions of the district court (III 469-486, 487-493) are reported at 203 F. Supp. 78 and 204 F. Supp. 921.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 1963 (V. 49). Petitions for rehearing were denied on May 27, 1963 (V. 99-103). The petition for a writ of certiorari by Corallo (No. 227) was filed on June 21, 1963. Mr. Justice Harlan extended the time of petitioners Keogh and Kahaner for filing petitions for writs of certiorari to and including July 26, 1963, and separate petitions (Nos. 303 and 304) were filed by them on July 25, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was such improper interference with the jury during its deliberations as to require declaring a mistrial because, on being escorted to eat, the jurors passed through a crowd of newsmen and photographers who asked questions and took pictures,

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[1] The certified record is in five parts. Volume I consists of Keogh's appendix and is referred to as "I.". Volume II consists of Kahaner's appendix and is referred to as "II." Volume III consists of Corallo's appendix and is referred to as "III." Volume IV consists of the government's appendix and is referred to as "IV.". Volume V contains the proceedings in the court of appeals and is referred to as "V".

there being no claim that the jurors answered any questions.

2. Whether giving a modified "Allen" charge was proper in the circumstances of this case.

3. Whether the charge to the jury, including a summary of the evidence, was fair.

4. Whether it was reasonable for the F.B.I. to examine petitioner Keogh's telephone message book during an interview with his clerk who was instructed by Keogh to furnish any information requested.

5. Whether a statement by a witness whose trial testimony was limited to the procedure for keeping messages and identifying a message book was producible under the Jencks Act, where the witness also testified for the defense.

6. Whether the evidence was sufficient to support the verdict.

STATEMENT

Petitioners[*] were convicted by a jury in the United States District Court for the Southern District of New York of conspiring to obstruct the due administration of justice by improperly attempting to influence the outcome of a criminal prosecution in the United States District Court for the Eastern District of New York (III. 9, 13-20). Each was sentenced to imprisonment for two years, subject to being paroled at any time at the discretion of the parole board (IV.

[*] Two other defendants, Erdman and Moore, were severed for purposes of trial (III. 7) and testified for the government.

248). The convictions were unanimously affirmed (V. 49).

The evidence showed that on January 5, 1961, co-conspirator Moore, and five others, including one Cohen, were arrested in the Eastern District of New York on charges of concealing assets from the trustee in Bankruptcy of Gibralter Amusements, Ltd. (IV. 59; see III. 14), a corporation dominated by Moore (IV. 173). Cohen's cousin, Seymour Deutsch, talked with Dr. Erdman about helping his relative. (IV. 126). Erdman in turn called petitioner Kahaner, a friend and patient, who at that time was the Chief Assistant United States Attorney in the Eastern District of New York (IV. 126-127, II. 250-251). During January Kahaner ascertained that it had been tentatively decided to seek indictments against three of those arrested, including Moore (IV. 114). When Deutsch, pursuant to an appointment made by Erdman, met with Kahaner to discuss the position of Cohen, Kahaner advised him to have his cousin and two other employees give statements to the government (IV. 129).

During January Moore met with Erdman and discussed the possibility of paying $60,000 to a lawyer, but Erdman persuaded him to bring in the papers so that Erdman could see what could be done (IV. 59-61, 134-135). In the middle of February, Kahaner called Erdman and said he wanted $35,000, in return for which he promised that three would not be indicted and, as to the remaining three, who would be indicted, "he would see to it that they were treated

softly by having the case * * * brought before a specific judge in April * * *" (IV. 7). Erdman called Deutsch to relay the information to Moore that something could be done for $35,000 (IV. 7, 130). Shortly thereafter, Moore, Deutsch and Cohen met in Erdman's office, where Erdman explained the proposition. It was suggested that petitioner, Corallo, hold the money "to insure the contract" (IV. 131, 7-9, 64-66). Later, at a meeting with Moore and Erdman, Corallo expressed the opinion that Moore should follow Kahaner's advice (IV. 10-11). It was decided that $15,000 would be paid in advance and that Corallo would hold $20,000 in escrow to be paid when the matter was satisfactorily concluded (IV. 11). Within 24 hours after Erdman informed Kahaner that Moore "was going along", Kahaner telephoned Erdman for part of the money (IV. 11-12). Erdman made arrangements for Moore and Kahaner to meet in his office on February 21, 1961. Two days after the meeting, Moore left at Erdman's office an envelope with $5,000 which Kahaner picked up (IV. 12-14, 67-68).

On February 24, 1961, the grand jury indicted three men in the *Gibralter* case, one of whom was Moore (IV. 14, 115-116). Shortly thereafter, Kahaner told Erdman by telephone that much pressure was being applied against Moore, and that Erdman should speak to petitioner Keogh (IV. 14-15), a judge of the New York Supreme Court (I. 649). Keogh had known Erdman since 1956 and had known Kahaner for approximately ten years (I. 639, 648; IV. 2; II. 269). After a meeting with Moore and Corallo in which Corallo said Erdman "should go to see the

brothers",[3] Erdman visited Judge Keogh, taking a copy of the indictment (IV. 15). Moore drove him over, but only Erdman went into the Judge's chambers (IV. 16). The judge, after scanning the Moore papers, began speaking of his financial problems and gave Erdman a card (Govt. Ex. 1), listing in his handwriting various remodeling expenses totaling $9,027 (IV. 16-17).[4] When Erdman asked whether he could do anything, Judge Keogh replied, "Don't worry" (IV. 17). Erdman later showed the card to Moore (IV. 18, 71-72).

On March 2, Kahaner telephoned Erdman and told him everything would have to be hurried since Judge Rayfiel had been transferred from the April session to the March session. Kahaner said that a quick probation report would cost $500 and that he wanted another payment (IV. 18). Erdman related this to Moore, who brought Erdman $10,000 in two envelopes (IV. 18-19, 71). Erdman gave one envelope to Kahaner at Erdman's office and the other to Keogh in his chambers (IV. 19). Upon receiving the envelope, Keogh told Erdman not to worry and gave him another card with the figure 3500 (Govt. Ex. 2) which he said he would like to have as quickly as possible (IV. 19-20).

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[3] Petitioner Keogh and Congressman Eugene J. Keogh are brothers (I. 628).

[4] At the bottom of the card Erdman had written "[T]empler" (IV. 16), as a reference to a model of automobile (IV. 18). Keogh purchased a "Tempest" model Pontiac on April 12 (I. 655-656).

Meanwhile, Kahaner told Williams, who was the assistant in charge of the *Gibralter* case, that the defendants would plead guilty. Williams communicated with Moore's lawyer, Becker, who denied that his clients would plead guilty. However, on March 9, all those indicted in the *Gibralter* case entered pleas of guilty before Judge Rayfiel, to the surprise and over the objection of their attorney. Sentence was set for March 30 (IV. 116-118, 139-140, 72; III. 305).

In the middle of March, Erdman arranged for Moore and Corallo to meet Kahaner. Corallo told Kahaner that Moore was important to him and that Kahaner should "[k]eep him on the street" (IV. 21-22). Later Kahaner telephoned Erdman for more money (IV. 22). On March 29, Moore and Erdman met Kahaner at a coffee shop and gave Kahaner $2,500 of the remaining $20,000 (IV. 24-25, 75-76). Moore and Erdman then drove over to see Judge Keogh. Erdman went in alone, gave Keogh the balance of the $20,000 and reminded him that the sentencing was the next day. Keogh said "Don't worry". Judge Keogh had lunch with Judge Rayfiel that day (IV. 26, 76-77, 166). Judge Rayfiel testified that Judge Keogh told him that a good friend of Moore's had told Keogh what a fine fellow Moore was and wondered whether leniency could be extended. Judge Rayfiel told Judge Keogh that the probation report indicated that leniency was not merited (IV. 166).

That afternoon, Keogh told Erdman by telephone that Judge Rayfiel had received a lot of pressure from other judges, there was a lot of talk about

Moore's "connections", and that they were all going to get sentenced (IV. 26). Erdman then asked Moore about his connections with the underworld, and told him about the pressure from the two judges who had informed Judge Rayfiel of the "talk" that Moore was going to get a suspended sentence (IV. 27, 77-78). After various telephone calls, Keogh arranged for Erdman to see Judge Rayfiel at 9:30 the next morning (IV. 27).

On March 30, at 9:30 a.m., Erdman saw Judge Rayfiel who told him that no leniency could be expected (IV. 28, 167). Erdman and Becker (Moore's attorney) then went to see Keogh (IV. 29, 143). Becker was excused from the room (IV. 143). Erdman also saw Kahaner, who went to see Judge Rayfiel's secretary, and said he was going to tell the assistant in charge of the case not to object to a motion to withdraw the plea (IV. 30). Judge Rayfiel overruled the motion to withdraw the pleas, and imposed sentences of three years' imprisonment on Moore, and lesser terms on the others (IV. 121, 141).

When Moore informed Erdman of the sentences, Erdman telephoned Judge Keogh, who claimed this was the third time that Judge Rayfiel had disappointed him (IV. 31). Corallo asked Erdman to give the money back (IV. 82, 152). Later, when Kahaner, Corallo and Moore met in Erdman's office, Kahaner, who complained that he was the only one who had done anything, suggested that perhaps they could work something out by making restitution (IV. 32-33, 83-84). Kahaner again asked for more money

but finally said he would help because of his friendship with Erdman (IV. 83, 33).

On April 5, 1961, Kahaner, Erdman, and Keogh had lunch together in the Brooklyn Club where they discussed restitution and the possibility of having the sentence reduced (IV. 33-34). In May, Moore, Erdman, and co-conspirator Forman, who had arrived from England on April 30,* met with Keogh in his chambers and told him they were having difficulty with Mr. Jaspan, who was the attorney for the trustee (IV. 35-37, 87-88, 154, 160-162). Jaspan testified that during a trial early in May, Judge Keogh called him to the bench and inquired about the *Gibralter* case, saying that Mr. Erdman and he would like to know what was happening. Jaspan told Keogh they were awaiting a written offer of restitution (IV. 176). On May 22, Jaspan, Moore, Erdman and Forman attended a meeting in Judge Keogh's chambers and discussed a settlement offer of $50,000 which was to be guaranteed by notes of Moore, endorsed by Erdman (IV. 177-178). At this meeting, Judge Keogh reviewed the settlement letter and struck out a provision conditioning the offer on a satisfactory disposition of the criminal matter, stating that that would make Judge Rayfiel "angry all over again" (IV. 89-90, 37-41, 163). On Judge Keogh's advice that Judge Rayfiel "was mellowing" (IV. 41), Erdman co-signed the notes and Jaspan

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*Before the grand jury, Keogh had insisted he met Forman on March 29 and had made a note of his name (IV. 241-245).

called a conference with Judge Rayfiel, which Kahaner attended. When Jaspan told the judge of the restitution, Judge Rayfiel said he would entertain a motion to reduce the sentence and would continue the bail pending determination of the motion (IV. 184-185, 145-146, 168-170).

During May, Corallo told Erdman that he, Corallo, was responsible for a portion of the money and hoped to get it back (IV. 56-57). In June, when Erdman gave Judge Keogh a one thousand dollar check, the judge said he hoped that Erdman had not made any definite commitments to Moore, and also hoped that Moore did not know that he, Keogh, was receiving part of the money (IV. 43). In July, when Erdman expressed concern because Moore and Forman felt they should get their money back, Kahaner said "Let them prove it. You don't want to get yourself involved" (IV. 44-45).

ARGUMENT

The detailed and careful opinion of the court of appeals (V. 1-48) adequately disposes of most of the points raised in the petitions. Accordingly, on several of the issues we shall confine ourselves to a relatively brief statement.

1. The jury started their deliberations at 3:50 p.m. on June 14, 1962 (I. 762, 853). The following afternoon, counsel for Judge Keogh complained that he had received information "that last night as the jurors left there were, of course, television cameramen downstairs and other photographers, and again, today at lunch, the press seemed to go entirely berserk about

it. They were not only taking photographs of the jurors as they were walking but some of the newspapermen were running along beside the jury asking them questions". The judge stated that this was the first he had heard of the matter. He said "I don't have the slightest doubt that none of these jurors answered any question that was put to them and I am sure you are not suggesting that. Indeed I don't know that in fact any juror was questioned or that any attempt was made to talk to any juror" (I. 864-865; III. 436-437). In response, counsel merely said "I just don't think it is right". The judge agreed and said he would see that "nobody gets near the jurors, not even within speaking distance" (I. 865; III. 437). He offered to call in the newspapermen and tell them not to approach the jurors, but expressed doubt as to whether this would exacerbate or ameliorate the situation. Defense counsel said he did not know (I. 865). There was a suggestion by defense counsel that the jurors be taken by bus. The judge said he would talk to the marshal and wanted counsel to wait for the marshal to come, but counsel declined to do so. Later the judge reported that the marshal had assured him that reporters would be kept from the jurors (I. 866-867; III. 437-439).

The only other reference to this matter was the same evening when, in the course of a motion for a mistrial, counsel for Judge Keogh said: "I pointed out to the Court the incidents that happened when the jury went out to lunch and the reporters pouring questions at jurors—I don't know what they asked

and I don't know what they said. * * * I believe with this constant importance of the case and the action of the press and the television cameras last night, today, at lunch, there were even at night when we went out to dinner, there were cameramen there. I had to ask them to go away, they wouldn't go away" (I. 874-875; III. 447-448).

It is thus evident that no one disputed the judge's assumption that the jurors had not answered any questions. And every indication is that the questioning ceased (albeit the cameras continued to photograph) after the measures taken by the judge as soon as the matter was first brought to his attention. In any event, assuming newspaper reporters did ask questions of the jurors as they left the building in a group for lunch, this circumstance would not taint a verdict. They were not private communications, such as those involved in *Remmer* v. *United States*, 347 U.S. 227. Nor could they be said to amount to undue pressure. In view of the public position of one of the defendants, the jurors could hardly have been unaware that the press and public were interested in the case.

2. As noted, the jury began deliberating on the afternoon of June 14, 1962 (I. 762, 853). During the course of their deliberations there were numerous requests for exhibits and for the re-reading of portions of the charge and testimony (see I. 854-864, 877-878, 880, 884-888). At 10:40 p.m. on June 15, the court stated (I. 870), "Members of the jury, I have a note from you in which you suggest that you desire to discontinue your efforts" (See note, II. 429).

The judge then remarked that, although this was the second day, relatively little time had been available for actual deliberation. He suggested that further discussion and consideration might lead to a change of view, but emphasized that no juror was to vote for any verdict which did not represent his considered judgment (I. 871-872). Thereafter he read the "Allen" charge (from *Allen* v. *United States*, 164 U.S. 492) and suggested they retire for the night and resume again in the morning (I. 872). Counsel for Keogh complained that, although the jurors were told not to yield their conscientious judgment, the judge had given the *Allen* charge afterward. He said, "Had you done it in the reverse, we could have no quarrel in that regard" (I. 874). Accordingly, the court brought the jury back and reiterated his charge that the each juror was not to yield his judgment if he had a conscientious view that differed from that of other jurors (I. 875-876). The following afternoon the jurors made several requests, including one for a rereading of the *Allen* charge. The judge complied but again admonished that each juror's vote must reflect his conscientious view without regard to the vote of any other juror (I. 887). No objections were then expressed by counsel. There was no intimation as to the numerical division of the jury, either before the charge or before the jurors requested it reread; in fact the trial judge specifically told the jury that he would not ask how they stood (I. 871).

In the circumstances of this case, giving the *Allen* charge was fully justified, particularly since the judge modified the charge as approved in that case to

stress the duty of each individual juror to his own conscience. In any event, the only objection raised by counsel was accepted by the trial judge.

3. All petitioners complain about the summary of the evidence in the charge to the jury. The court below has made a detailed analysis of most of these complaints and found them wanting. A reading of the charge shows that it was eminently fair. The judge expressly warned the jury that his summary would not be complete and that it was the jury's recollection, and not his own, which was to govern. He said (I. 816):

> Thus, in broad outline, I have sketched the evidence and the contentions of the prosecution and defense. It will readily occur to you that there is much evidence and testimony of other witnesses to which I have not adverted.
>
> My failure to touch upon other evidence is no indication that it has been disregarded or that I am placing emphasis upon such testimony to which I referred. The broad review of the evidence was to focus attention upon some of the issues, disputed issues of fact to be considered by you. You will understand that all evidence in the case is important and must be considered by you.

The judge repeated the admonition as a supplementary charge just before the jury retired to deliberate (I. 850). In any event, there were no serious omissions in the court's summary of the evidence.

a. Petitioners Keogh and Kahaner complain (No. 303, pp. 17-23; No. 304, p. 20) that the judge failed to charge on the main theory of the defense, that

Erdman received the money and kept it or that no money ever changed hands. However, the Court unmistakably charged the jury that the "basic issue in the case is whether the money was paid over to Keogh or Kahaner" (I. 818), and he mentioned a number of times that these two defendants denied receipt of the money (I. 798, 799, 806, 807, 808, 809, 810, 811). The judge quite properly left the details of the argumentation to counsel. It was sufficient to tell the jury, as he did, that "counsel, during the course of their summation, referred to various matters which they stressed and believed were important and to which I did not refer, and, of course, you will bear those matters in mind" (I. 850).

b. Corallo complains that in the charge the judge cited as evidence Moore's grand jury testimony as to one of the meetings, which differed from his trial testimony (No. 227, pp. 10-12). The fact is that, at trial, this grand jury statement was specifically limited to the issue of Moore's credibility (III. 238).[*] In restating the government's evidence the court correctly summarized the testimony of Erdman as to the meeting. The judge noted that Moore "acknowledged" certain statements by Corallo before the grand jury but that "at this trial, Moore testified he had no

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[*] The difference between Moore's trial and grand jury testimony as to Corallo justified the ruling of the trial court in permitting the government to cross-examine him on the basis of his grand jury testimony. *United States* v. *Murray*, 297 F. 2d 812 (C.A. 2) certiorari denied, 369 U.S. 828, *United States* v. *Maggio*, 126 F. 2d 153 (C.A. 3), certiorari denied, 316 U.S. 686.

recollection thereof" (III. 369). This was not a reference to the testimony of Moore as evidence. Furthermore, in summarizing Corallo's defense, the court referred to "the inconsistencies among the government witnesses; noted that Corallo "emphasizes Moore's testimony, contradicting Erdman as to events in which he allegedly was involved"; and summarized Moore's testimony at the *trial* in this respect (III. 387). Thus, the charge fairly put Moore's testimony with respect to Corallo before the jury.

4. There is no merit in Kahaner's complaint that the failure of the government to turn over the statements of two minor witnesses requires reversal (No. 304, pp. 37-38).

a. Rose Kippe, Kahaner's former secretary, was called as a government witness to identify a telephone message book and to explain how the messages in the book were recorded and information given to Kahaner (IV. 213-217). A statement given by Mrs. Kippe when she was interviewed was not turned over on the belief that it did not relate to her very limited, undisputed testimony. Thereafter, the defense called Mrs. Kippe as a defense witness and the government made slight use of the statement she had given (II. 312). The court of appeals examined the statement and found that non-production was harmless (V. 23).

b. The government called Dr. Miller as a rebuttal witness to show that the "doodling" in Kahaner's diary covered up references to Erdman (IV. 234-241). On appeal, counsel for Kahaner requested a statement as to whether the government had any reports by him or by another witness. There were

none as to the other witness, but as to Dr. Miller it was discovered that he had made a report of his laboratory findings to the F.B.I. on the day preceding his testimony (V. 24). Since this was merely a summary of his scientific findings, the court below found the non-production to be harmless error.

In this extensive trial, where the government at the outset agreed to produce statements without a demand therefor, the minor matters now complained of were of no significance.

5. Petitioner Keogh's claim that there was an illegal search and seizure when government agents examined the telephone message notebook while interviewing his staff (No. 303, pp. 23-27) is refuted by the record.

At the conclusion of the government's direct case, it sought to introduce into evidence various loose leaf telephone message logs kept by Keogh's clerks to record messages received while the judge was not available. For that purpose the government first called Max Benjamin, one of the clerks. Before the examination had progressed very far, the trial judge decided to take evidence in the absence of the jury (IV. 217-219). The court indicated that the question was whether Keogh had waived his constitutional privilege to refuse production, and characterized the hearing as "almost in the nature of a motion to suppress" (IV. 221).

Keogh's counsel stated that if the defense had to proceed, his client would testify and the records would then be available, but he did not know why he should produce them as part of the government's case (IV. 220).

Benjamin testified that Keogh told him in front of the F.B.I. agents to "[t]ell them everything they want to know and be cooperative with them" (IV. 219, 224-225). During the course of the interview the agents asked the clerks whether notes were kept of telephone messages. Benjamin showed them the current book and they "skimmed through the pages" (IV. 225). Agent Maher testified that Keogh had told his clerks that the F.B.I. was going to interview them and "he wished that they would cooperate and furnish any information that we requested" (IV. 228). The government withdrew its request for the production and admission of the books (IV. 229) and the judge remarked that the government was well advised to do so since he had always strictly construed a claim of waiver of a constitutional right (IV. 229).

Thereafter, Keogh's counsel asked for a hearing to determine what information had been obtained from the telephone logs and the extent to which it had been used for further investigation so that a proper motion could be made to strike out testimony flowing therefrom (IV. 229-230). The judge denied the request, noting that no motion to suppress had been made until that time, the fourth week of trial, when the government was about to rest its case. The court said (IV. 232-233):

> I did say that my own view has always been to hold that a waiver of constitutional rights must be clearly made. That is all I said. I did not say and didn't suggest that there was any illegal search here. The fact of the matter is

> that there may be others who would, and perhaps properly, construe a statement made by the defendant Keogh to the two people on the staff, as I recall the language, that they should cooperate and furnish any information requested by the agents, to cover the turning-over of books, but since there was no express reference to books and or records, I expressed myself as I did. Moreover, the statement to his employees that they furnish any information requested by the agents, it would seem to me, would fully justify these employees looking at any records and acquainting the agents with whatever information is in those records, apart from their personal knowledge.

When Judge Keogh took the stand he admitted that, after the interview, his clerk had told him that the agent had "thumbed through" the telephone messages (I. 700). The pertinent message slips were introduced as part of the defense (see I. 650-700).

It is evident that Judge Keogh adopted the strategy of exhibiting full cooperation. Whether or not he irrevocably waived his right to withhold the notebook, the inspection made by the agents, with the consent of the judge's clerk, acting on his instructions to cooperate, was plainly authorized. Accordingly, there was no occasion to suppress whatever information may have been derived from that perusal of the record. The fact that the government did not press for the admission of the telephone logs was not an admission of wrongdoing. Since the defense had made clear that the judge was going to offer these in evidence if he took the stand (and actually did so) the

government was justified in abandoning a time-consuming collateral hearing at this juncture of the case.

6. All petitioners in various ways question the sufficiency of the evidence to convict. However, the matter was fully and fairly presented to a jury which, by its requests for testimony and exhibits, indicated a conscientious effort to weigh all the evidence. They saw and heard the witnesses and found the explanations of Keogh and Kahaner wanting. The court of appeals has fully reviewed the evidence and found it sufficient. Since this Court does not reweigh the evidence or redetermine the credibility of witnesses (see *Glasser* v. *United States*, 315 U.S. 60, 80), it is sufficient to note that, as the Statement makes plain, none of these petitioners were mere bystanders, but all played important, although different roles, in this conspiracy to obstruct the due administration of justice.

While it is true that the basic thread of the conspiracy is supplied by accomplices, there are many points of corroboration. The telephone logs, the marked papers on the restitution plan, Judge Keogh's cards, the testimony of secretaries, and of the non-accomplice lawyers, Becker, Jaspan and Williams, all bolster the narrative of the government's principal witnesses. Corallo's suggestion (No. 227, pp. 12-13) that the evidence was inadequate ignores the testimony that it was not until Corallo gave his approval that Moore became involved in the scheme (IV. 11); that Corallo agreed to act as escrowee (IV. 11); that Corallo accompanied Moore to a number of important meetings with Erdman (IV. 15, 26-27,

110); that Corallo told Kahaner to keep Moore "on the street" (IV. 22); that Corallo told Erdman in May, 1961, that "he was responsible for a portion of the money and that he would hope to get it back" (IV. 56). As to the other two petitioners, the government's evidence, which the jury credited, showed deep involvement in a conspiracy to obstruct justice. Judge Keogh's argument that, even if he did receive money, he committed no federal crime in talking to Judge Rayfiel, because he did not offer money to Judge Rayfiel, ignores the element of corrupt motive. What the statute condemns is a corrupt attempt to obstruct the administration of justice. The jury, on sufficient evidence, obviously concluded that the scheme which Judge Keogh joined had such an evil purpose.

Because the case involves a judicial officer and a former official of the Department of Justice, we have reviewed the record with special care for this Court even though, as its opinion reveals, the court of appeals has already given the matter very careful consideration. We conclude, however, that there is no doubtful question which requires further review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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